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Via Certified Mailing - Return Receipt

August 1, 2012

Mr. Matthew Butler
Harbormaster
San Rafael Yacht Harbor
557 Francisco Blvd East.
San Rafael, CA 94901

Ms. Mary F. Kirrane, Trustee
CMFK Trust
P.O. Box 11
Belvedere, CA 94920

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act ("Clean Water Act")**

Dear Mr. Butler and Ms. Kirrane:

NOTICE

I am writing on behalf of Northern California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") that River Watch believes are occurring at San Rafael Yacht Harbor located at 557 Francisco Boulevard East in San Rafael, California ("Yacht Harbor"). River Watch is a non-profit, public benefit corporation dedicated to the protection and enhancement of all surface and ground waters in Northern California. This letter is being sent to you as the responsible owners, officers, operators or managers of the San Rafael Yacht Harbor.

This letter addresses Yacht Harbor's unlawful discharge of pollutants from the marina facility into San Rafael Canal which flows directly into San Francisco Bay. Yacht Harbor is discharging both partially treated and raw sewage to these surface waters from vessels docked at the facility, as well as storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control

Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit"). The Waste Discharger Identification ("WDID") number for Yacht Harbor listed on documents submitted to the State Water Resources Control Board ("State Board") and California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") is 2_21I016561. Yacht Harbor is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

CWA § 505(b) requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the state in which the violations occur. As required by the CWA, this Notice of Violations provides notice of the violations that have occurred, and continue to occur, at Yacht Harbor's premises. Consequently, Yacht Harbor is hereby placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice of Violations, River Watch will be entitled to bring suit in the United States District Court against Yacht Harbor for continuing violations of an effluent standard or limitation, permit condition or requirement, or Federal or State Order or Plan issued under the CWA in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance identified and outlined in this Notice of Violations.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch identifies discharges of partially treated and raw sewage from vessels moored at Yacht Harbor's privately owned docks in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to San Rafael Canal and San Francisco Bay (waters of the United States) without a NPDES permit, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f). Three types of discharges from Yacht Harbor's site are subject to CWA § 301(a) permitting requirements: 1) dry weather discharges (non-storm water) containing pollutants caused by vessel repair and maintenance activities that would cause non-storm related discharges; 2) discharges during rain events which are not entirely composed of storm water; and, 3) storm water discharges. In 1987 Congress amended the Clean Water Act, adding CWA § 402(p) to further regulate storm water discharges and expanding the coverage of Section 402's permitting requirements.

River Watch also provides notice to Yacht Harbor of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and the General Permit, relating to Yacht Harbor's marine facility services for the maintenance and repair of vessels. Yacht Harbor filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The NOI was approved by the State Board on June 5, 2001 and Yacht Harbor was assigned WDID number 2_21I016561. Yacht Harbor has failed and is failing to comply with the terms and conditions of the General Permit requiring Yacht Harbor to prepare, implement, review and update an adequate Storm Water Pollution Prevention Plan ("SWPPP"), and develop and implement an adequate monitoring and reporting program.

2. *The activity alleged to constitute a violation.*

Yacht Harbor is a private marina leasing docks to private vessel owners, providing approximately 140 berths for temporary and permanent mooring, and marine facility services for the maintenance and repair of vessels. River Watch has set forth narratives below describing discharges of partially treated and raw sewage to surface waters from "vessels" (a "point source" under the CWA) moored in Yacht Harbor, and discharges of pollutants from the marine facility services as the activities leading to violations, and describing with particularity specific incidents which may or may have not been reported in public reports and other public documents in Yacht Harbor's possession or otherwise available to Yacht Harbor. River Watch incorporates by reference the records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is San Rafael Yacht Harbor, its Harbormaster and all owners and/or operators of the marina and marine facility services. This Notice also includes all of employees of Yacht Harbor responsible for compliance with the CWA and compliance with any applicable state and federal regulations and permits.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Yacht Harbor facility at 557 Francisco Boulevard East in the City of San Rafael, California 94901, and includes the adjoining waters of the tidally influenced San Rafael Canal and the waters of San Francisco Bay to the east, both of which are waters of the United States. San Rafael Canal, an historic inlet from San Francisco Bay, was dredged and reconfigured by the United States Army Corps of Engineers ("USACOE") beginning in the 1920s. Regular dredging by the USACOE is required to ensure the Canal remains a navigable waterway. The USACOE has currently halted dredging in the western part of the Canal following the discovery of excess levels of PCBs in the dredged soils.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is August 1, 2007 to August 1, 2012. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, referred to throughout this Notice as "River Watch". River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

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BACKGROUND

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that any discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, which has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA.

Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce violations of effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1). River Watch contends: (1) Yacht Harbor has no individual NPDES permit allowing it to discharge partially treated and raw sewage from vessels moored at Yacht Harbor's privately owned docks; and, (2) Yacht Harbor has failed and is failing to comply with the substantive and procedural requirements of the General Permit for discharges from its vessel repair and maintenance activities.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. (See 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Board.

The beneficial uses of the waters adjacent to Yacht Harbor and the adjoining waters of San Rafael Canal and San Francisco Bay include, but are not limited to: navigation; water contact recreation; non-contact water recreation; sport fishing; preservation of areas of special biological significance; wildlife habitat; marine habitat; habitat for threatened and endangered species; and fish spawning.

Sources of discharge by Yacht Harbor to these waters, all waters of the United States, are the discharges of partially treated and raw sewage from vessels moored at Yacht Harbor's privately owned docks, and the discharges of pollutants including, but not limited to, paint, oil and grease, fuel, solvents, solid waste, chemical waste, biological material, garbage, dirt, dust, and metals (including copper and zinc) from the vessel repair and maintenance activities at Yacht Harbor. River Watch contends Yacht Harbor has no individual facility NPDES permit for the sewage discharges, and has failed and is failing to comply with the General Permit for the discharges from its vessel repair and maintenance activities.

As stated previously, the CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under a NPDES permit. Pursuant to the CWA and the Basin Plan for the Regional Board, any point source discharge of effluent to waters of the United States must comply with the applicable regulatory requirements – in this case, technology-based, tertiary treatment standards for the discharges of partially treated and raw sewage from the vessels moored at Yacht Harbor's privately owned docks, and compliance with the General Permit for discharges from the vessel repair and maintenance activities. Hence, the unpermitted discharge of partially treated or raw sewage from a "vessel" (included within the definition of a "point source" under the CWA) moored at a Yacht Harbor dock to waters of the United States, and discharges of pollutants

including, but not limited to, paint, oil and grease, fuel, solvents, solid waste, chemical waste, biological material, garbage, dirt, dust, and metals (including copper and zinc) from the vessel repair and maintenance activities at Yacht Harbor to waters of the United States, is illegal under the CWA. In addition, the Basin Plan adopted by the Regional Board contains discharge prohibitions which apply to these discharges.

River Watch contends Yacht Harbor's discharges of pollutants from numerous vessels moored at its docks and separately from its marine repair and maintenance operations constitutes a nuisance. These discharges are injurious to health, indecent and offensive to the senses, and/or an obstruction to the free use of property.

REMEDIAL MEASURES REQUESTED

River Watch believes the following listed remedial measures are necessary in order to bring Yacht Harbor into compliance with the CWA. Also, that the implementation of these measures will reduce the biological impacts of Yacht Harbor's non-compliance upon public health and the environment surrounding Yacht Harbor:

1. Discharges –

Prohibition on discharges of partially treated and raw sewage from vessels moored at Yacht Harbor, and the discharges of pollutants including, but not limited to, paint, oil and grease, fuel, solvents, solid waste, chemical waste, biological material, garbage, dirt, dust, and metals (including copper and zinc) from the vessel repair and maintenance activities at Yacht Harbor.

2. Sewage –

Compliance with the Recommendations detailed in the California Department of Boating and Waterways' *"Report to the State Water Resources Control Board – Recommendations for Vessel Waste Disposal Facilities for Region 2 Marinas and Harbors, Excluding Tomales Bay"* (SWRCB Interagency Agreement #02-194-250-0; www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/R2%20Pumpout%20Survey%202004.pdf).

3. Repair and Maintenance –

Compliance with the Best Management Practices ("BMPs") detailed in the EPA's *"Industrial Stormwater Fact Sheet Series, Sector R: Ship and Boat Building or Repair Yards"* (EPA Office of Water, EPA-833-F-06-033, December 2006); www.epa.gov/npdes/pubs/sector_r_shipbuilding.pdf).

4. Testing –

Performance of comprehensive human marker testing on surface waters adjacent to each of Yacht Harbor's docks to test for sewage contamination from vessels, and compliance with the storm water sampling, monitoring and reporting requirements of the General Permit. Testing to be funded and administered by Yacht Harbor.

VIOLATIONS

River Watch contends that between August 1, 2007 and August 1, 2012, Yacht Harbor has violated the CWA, the Regional Board's Basin Plan and the Code of Federal Regulations by reason of discharging pollutants to waters of the United States without a NPDES permit.

The below-listed violations are derived from eye witness reports and records publically available, or records in the possession and control of Yacht Harbor. Furthermore, River Watch contends these violations are continuing.

<u>Violations</u>	<u>Description</u>
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1800	Discharges of Sewage from Vessels
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Visual occurrences of sewage discharges from vessels moored at Yacht Harbor's docks demonstrate numerous events from August 1, 2007 to August 1, 2012. Records on file with the Regional Board and State Board contain no evidence that Yacht Harbor has either reported any such discharges itself, or has the capacity to monitor and report such incidences. Therefore, the number of sewage discharges alleged herein is based upon extrapolation from current data and eye witness reports from citizens.

300	Discharges of Pollutants from Marine Facility Operations
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Visual occurrences of discharges of pollutants including, but not limited to paint, oil and grease, fuel, solvents, solid waste, chemical waste, biological material, garbage, dirt, dust, and metals (including copper and zinc) from the vessel repair and maintenance activities at Yacht Harbor demonstrate numerous events from August 1, 2007 to August, 2012. Yacht Harbor has failed and is failing to develop and implement an adequate monitoring and reporting program that fully identifies all discharges as required by the General Permit Section B.

In addition, Section A of the General Permit requires dischargers of storm water associated with industrial activity to develop, implement, and update an adequate SWPPP no later than October 1, 1992. Section A requires dischargers who submitted an NOI

pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific Best Management Practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges. The SWPPP must include BMPs that achieve Best Available Technology and Best Conventional Pollutant Control Technology. The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity; a list of significant materials handled and stored at the site; a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur.

The SWPPP for Yacht Harbor must also include an assessment of potential pollutant sources at Yacht Harbor and a description of the BMPs to be implemented at Yacht Harbor that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary.

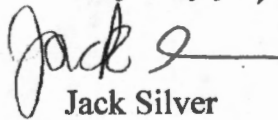
River Watch's investigation of the conditions at Yacht Harbor indicates that Yacht Harbor has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Yacht Harbor has failed and is failing to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watersheds for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Yacht Harbor's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against Yacht Harbor for the violations of the CWA identified and described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if Yacht Harbor wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Jack Silver

JS:lhbm

cc:

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